

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., COMEDY)
PARTNERS, COUNTRY MUSIC)
TELEVISION, INC., PARAMOUNT)
PICTURES CORPORATION, and BLACK)
ENTERTAINMENT TELEVISION LLC,)
Plaintiffs,)
vs.) Case No. 1:07CV02103
YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)
Defendants.)

THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)
Plaintiffs,)
vs.) Case No. 07CV3582
YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)
Defendants.)

DEPOSITION OF PATRICK WALKER

SAN FRANCISCO, CALIFORNIA

TUESDAY, JULY 22, 2008

REPORTED BY:

YVONNE FENNELLY, CRP, CSR NO. 5495

JOB NO. 15375

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4 JULY 22, 2008
5 10:00 a.m.
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7 VIDEOTAPED DEPOSITION OF PATRICK WALKER,
8 held at the offices of SHEARMAN & STERLING,
9 525 Market Street, San Francisco, California,
10 pursuant to notice, before YVONNE FENNELLY, CRP,
11 CSR License No. 5495.
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35

36 ALSO PRESENT: Lou Meadows, Videographer

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2 10:10 a shake or a nod of the head, it will make for a clearer
3 10:10 record and help Ms. Fennelly out as she prepares the
4 10:10 transcript.

5 10:10 Does that all make sense to you?

6 10:10 A. Yes, it does.

7 10:10 Q. What is your present position of employment?

8 10:10 A. I'm the director of video partnerships for
9 10:10 Google and YouTube, based in London, England.

10 10:10 Q. And you say you're based in London, England.

11 10:10 Do your responsibilities as director of video
12 10:10 partnerships extend to a particular geographic area?

13 10:10 A. Yes. They extend to Europe, Middle East and
14 10:10 Africa.

15 10:10 Q. And how long have you had that position?

16 10:10 A. I'm been employed by Google since January of
17 10:10 2006 and took on responsibility for Google Video at the
18 10:11 time. At the time I was employed that extended to
19 10:11 YouTube after the acquisition at the end of 2006.

20 10:11 Q. That was Google's acquisition of YouTube?

21 10:11 A. That's correct.

22 10:11 Q. If you could briefly described your educational
23 10:11 background after high school, at least as that term, if
24 10:11 you're familiar, that is used in US jargon?

25 A. Yes. I went to the University of Southern

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2 11:07 Q. Do you know if it was eventually

3 11:07 commercialized, VIIV?

4 11:07 A. Not that I'm aware of.

5 11:07 Q. And you left in 2005 to go to Google, you said?

6 11:07 A. No. It was -- I gave my notice at the end of

7 11:07 2005. I began my role at Google in January -- I think

8 11:07 January 16th, 2006.

9 11:07 Q. And I believe you testified that you were head

10 11:08 of video content partnerships; is that right?

11 11:08 A. I was head of content partnerships here, in the

12 11:08 Middle East, and Africa for Google when I was employed.

13 11:08 Q. You were at Middle East and Africa. I

14 11:08 sometimes see the acronym EMEA; is that right?

15 11:08 A. That's correct.

16 11:08 Q. Were there other heads of content partnerships

17 11:08 when you began in January 2006 for other geographic

18 11:08 regions?

19 11:08 A. There was someone responsible for content

20 11:08 partnerships in North America.

21 11:08 Q. Was that David Eun, E-u-n?

22 11:08 A. No; this was prior to Dave Eun joining Google.

23 11:09 It was Jennifer Feiken.

24 11:09 Q. Did you report through -- up through the

25 content, the head of content for North America or were

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2 12:00 BY MR. SHAFTEL:

3 12:00 Q. Now, I want to get back, when you write that,

4 12:00 "I'm sure this is the tip of the iceberg" --

5 12:00 A. Uh-huh.

6 12:00 Q. -- did you follow-up with anyone at Google

7 12:00 Video to try to determine whether there was more to the

8 12:01 iceberg than these six items?

9 12:01 A. I remember having conversations about how we

10 12:01 were to deal with content that might be unauthorized on

11 12:01 the surface.

12 12:01 Q. I'm referring specifically here to Channel 4.

13 12:01 A. Uh-huh.

14 12:01 Q. Channel 4 said that there is some unauthorized

15 12:01 material.

16 12:01 In your mind, at this point you're writing,

17 12:01 "I'm sure this is the tip of the iceberg." And you

18 12:01 testified you understand the importance of controlling

19 12:01 content rights to the content owner.

20 12:01 A. Right.

21 12:01 Q. So I want to know what you recall doing, if

22 12:01 anything, to investigate how much more of the iceberg

23 12:01 there was beyond these six items.

24 12:01 MR. INGBER: Asked and answered.

25 THE WITNESS: I was interested in understanding

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2 12:02 at this early time in particular how we were screening
3 12:02 for and then responding to content that might be
4 12:02 considered unauthorized.

5 12:02 BY MR. SHAFTEL:

6 12:02 Q. Tell me in, I guess, January of 2006, what
7 12:02 measures Google Video implemented to protect against
8 12:02 unauthorized copyrighted material appearing on the site?

9 12:02 MR. INGBER: Object to form; lacks foundation.

10 12:02 THE WITNESS: Can you rephrase that?

11 12:02 BY MR. SHAFTEL:

12 12:02 Q. Sure.

13 12:02 When you began at Google Video in the January
14 12:02 time period, a period when you wrote Exhibit 1 about
15 12:02 Channel 4's complaints, what did you understand Google
16 12:03 Video was doing to protect against unauthorized content
17 12:03 appearing on the Google Video site?

18 12:03 A. It was still quite early to my beginnings
19 12:03 there, and I had not spent time yet back in Mountain
20 12:03 View, but it was my understanding that for a variety of
21 12:03 reasons, including screening for adult material, violent
22 12:03 material, potentially unauthorized material, there was a
23 12:03 team that did review content before it was made live on
24 12:03 the site.

25 Q. Okay. So before content was available for

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2 12:03 access on the Google Video site, human beings were
3 12:04 reviewing the content?

4 12:04 A. Human beings had a -- my understanding is they
5 12:04 had a view through thumbnail images of content that was
6 12:04 submitted that they would approve or reject prior to its
7 12:04 going live.

8 12:04 Q. Where were the individuals based?

9 12:04 A. At the time they were based in Mountain View,
10 12:04 California.

11 12:04 Q. You say, "at the time."

12 12:04 Did that change at any point in time?

13 12:04 A. At a later point in time there were people
14 12:04 employed in Dublin to also provide some review of
15 12:04 material.

16 12:04 Q. Do you know how many people in Mountain View --
17 12:04 Mountain View is the headquarters for Google; is that
18 12:04 right?

19 12:04 A. Correct.

20 12:04 Q. Do you know how many people were employed to
21 12:05 review thumbnail contents before it went live on the
22 12:05 site?

23 12:05 A. No, I don't know how many.

24 12:05 Q. Any rough magnitude? Fewer than 20, more than
25 20?

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2 12:05 A. I think there were fewer than 20.

3 12:05 Q. Do you know how many hours a day content was

4 12:05 being reviewed as part of that process?

5 12:05 A. I recall it was a certain number of people's

6 12:05 full-time job to review the content, and that was

7 12:05 primarily done during working hours.

8 12:05 Q. And the number of those individuals you're not

9 12:05 sure about?

10 12:05 A. I'm not sure how many there were.

11 12:05 Q. And you testified that that team was expanded

12 12:05 to include individuals in Dublin; is that right?

13 12:05 A. Correct.

14 12:05 Q. Dublin, Ireland; is that right?

15 12:06 A. That's right.

16 12:06 Q. And when and why is that?

17 12:06 A. I don't remember the exact date, but it was

18 12:06 done in anticipation of our localization of Google Video

19 12:06 to Europe.

20 12:06 Q. Meaning there would be sites in Europe that

21 12:06 would have content specific for the given geographic

22 12:06 location?

23 12:06 A. We had a plan, and one of my responsibilities

24 12:06 was to help develop this plan, to localize Google Video

25 in several European countries. And my responsibility

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2 12:06 was specifically to make sure that we were engaging with
3 12:06 content partners in all of these markets. And as part
4 12:06 of that, we employed people, or I would say maybe
5 12:06 reassigned people, because there was already a large
6 12:06 team of people in Dublin for Google operations, to be
7 12:06 trained on the tools in languages that were specific to
8 12:06 the countries in which we would launch.

9 12:07 Q. And, in fact, in the spring of '06 you --

10 12:07 "you," meaning Google Video -- hired three individuals
11 12:07 to work in Dublin; is that right?

12 12:07 A. I don't know how many were hired. I was not
13 12:07 responsible for operations. I know that people were
14 12:07 employed.

15 12:07 Q. Would these individuals in Dublin be known as
16 12:07 the Dublin vidiots?

17 12:07 A. That was the term we used, vidiots.

18 12:07 Q. Who was the team in the US? Do you know who
19 12:07 was in charge of supervising and overseeing that team?

20 12:07 A. I believe it was Bhanu.

21 12:07 Q. Do you know how long -- do you know -- did you
22 12:07 ask about any statistics, how many videos they -- and
23 12:07 let's focus on '06 up through the YouTube acquisition.

24 12:07 A. Okay.

25 Q. Did you ask about any statistics, how many

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2 12:07 videos those individuals would review, how long it would
3 12:07 take between uploading and the review process?

4 12:08 MR. INGBER: Objection.

5 12:08 THE WITNESS: I remember having that
6 12:08 conversation. I have no idea what the actual numbers
7 12:08 were at this time. I do know there was quite a lag,
8 12:08 though, between upload and going live, which was due to
9 12:08 this review process.

10 12:08 BY MR. SHAFTEL:

11 12:08 Q. And when you say a lag, what magnitude of time
12 12:08 period are you talking about? A couple hours, couple of
13 12:08 days?

14 12:08 A. I think depending on the time of the week, it
15 12:08 could be a couple hours, it could be a couple days.
16 12:08 After the weekend it would take -- I think things would
17 12:08 build up on the weekend and they would have to then
18 12:08 review a larger collection of videos prior to them being
19 12:08 made live. This was a constant complaint for users,
20 12:08 actually, that there was a large lag.

21 12:08 You would upload something and it would go into
22 12:08 this, from their perspective, kind of silent period of
23 12:08 is it going live or not, and then it would appear or
24 12:08 not.

25 Q. You testified that you didn't know the number

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2 12:09 of individuals in Dublin that were reviewing videos

3 12:09 beginning in the spring of '06; is that right?

4 12:09 A. I don't know exactly how many people were

5 12:09 employed.

6 12:09 Q. I had suggested three.

7 12:09 Does that number seem incorrect to you?

8 12:09 A. It seems to be in the range.

9 12:09 Remember, I mean, Google was growing very

10 12:09 quickly. When I was employed, there were 4,000

11 12:09 employees. Now there is probably 20,000 employees. So

12 12:09 even if I were to pinpoint a specific time, you know, it

13 12:09 might have been different the week after. But I think

14 12:09 that number is in the range.

15 12:09 Q. Now, you said you weren't in charge of

16 12:09 operations. Who was in charge of the Dublin operations?

17 12:09 A. There was someone named William Kipp who was

18 12:09 overseeing a number of the operations there, and he had

19 12:09 someone on his team named Toffi Dawson who was

20 12:09 specifically working with that team.

21 12:09 Q. Do you know the training that -- do you know

22 12:10 the training that either the reviewers in Mountain View

23 12:10 or the reviewers in Dublin received with respect to

24 12:10 copyright issues?

25 A. I don't know the training specifically. I know

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2 12:10 they did receive training.

3 12:10 It was -- it was, in my understanding, part of

4 12:10 a broader training as to things to look out for in

5 12:10 looking at thumbnails that might be against our

6 12:10 policies, violent, pornographic, or potentially -- to

7 12:10 some extent, potentially unauthorized content.

8 12:10 Q. And what do you understand the reviewers to

9 12:10 have relied on -- or strike that.

10 12:11 How do you understand the reviewers would go

11 12:11 about determining whether certain content appeared to

12 12:11 violate copyright or not?

13 12:11 MR. INGBER: Object to form.

14 12:11 THE WITNESS: Can you rephrase that, please?

15 12:11 BY MR. SHAFTEL:

16 12:11 Q. Sure.

17 12:11 You said that they reviewed thumbnails of

18 12:11 content?

19 12:11 A. Yes.

20 12:11 Q. What do you mean by "thumbnails," just to have

21 12:11 it on the record.

22 12:11 A. I went to have a look one time, and what I

23 12:11 recall is that on a screen there would be a series of

24 12:11 thumbnails that would be representative of the video.

25 They wouldn't actually watch the video; they would see a

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2 12:11 series of thumbnails that would be representative of
3 12:11 videos across the length of that video. The number of
4 12:11 thumbnails, I think, was the same regardless of whether
5 12:11 the video was a minute long or ten minutes long or
6 12:11 however long, and they would, from my understanding, be
7 12:11 trained to look out for things that were obviously very
8 12:11 easy to identify such as, you know, pornographic
9 12:11 material or scenes of violence.

10 12:11 If there was a question as to whether or not it
11 12:11 was against our policies, then it would be passed to
12 12:11 another bucket for review.

13 12:12 With regard to potentially unauthorized
14 12:12 content, it was very spotty. It was interesting. One
15 12:12 of my concerns at the beginning was that it was quite US
16 12:12 centric, and I understand that they were looking for
17 12:12 certain things that were popular programs from US
18 12:12 broadcasters.

19 12:12 MR. SHAFTEL: We'll mark the next document as
20 12:12 Exhibit 2, Walker exhibit that starts at G154578.

21 12:12 (Document marked Exhibit No. 2
22 12:12 for identification.)

23 12:13 THE WITNESS: Thank you.

24 12:13 BY MR. SHAFTEL:

25 Q. I'd ask, Mr. Walker, if you could review that

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2 12:32 Bates No. 313442.
3 12:32 (Document marked Exhibit No. 3
4 12:33 for identification.)
5 12:33 BY MR. SHAFTEL:
6 12:33 Q. I'd ask, Mr. Walker, for you to review this
7 12:33 document, and I have a few questions about it. It's
8 12:33 actually two e-mails that appear on this page.
9 12:34 Mr. Anderson writes to you on Sunday,
10 12:34 March 5th, 2006 -- first off, who is Ethan Anderson?
11 12:34 A. International business product manager. So he
12 12:34 was the international product manager on Google Video.
13 12:34 Q. What in essence does the international product
14 12:34 manager do? What areas fall within that person's
15 12:34 responsibilities?
16 12:34 A. The international products manager was
17 12:34 responsible for the development of the product for the
18 12:34 purposes of localization, in this case, in Europe. But
19 12:34 he was also looking after the international development
20 12:34 plan of the product as a whole.
21 12:34 Q. And as head of content partnership, you were
22 12:35 trying to -- your responsibilities involved finding
23 12:35 counterparty content holders to provide content for
24 12:35 these local sites, European sites?
25 A. Right. The content, when it was submitted,

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2 03:08 quite -- it's a description that's quite technical. I

3 03:08 don't know at the time what that was specifically

4 03:08 referring to.

5 03:08 We were looking for ways to create a more

6 03:08 automated process by which we could detect content that

7 03:09 would help in the review process.

8 03:09 Q. And did anything happen in this respect over

9 03:09 the next one to three months that you're aware of,

10 03:09 April, May, June or thereabouts in 2006?

11 03:09 A. I don't recall.

12 03:09 (Document marked Exhibit No. 9

13 03:09 for identification.)

14 03:09 BY MR. SHAFTEL:

15 03:10 Q. Exhibit 9, Document 313463, the bottom portion

16 03:10 of which, Mr. Walker, is an e-mail from you to Hunter

17 03:10 Walk.

18 03:10 A. Uh-huh.

19 03:10 Q. In what position did Mr. Walk have at this

20 03:10 point, March 11, 2006?

21 03:10 A. He was one of the product managers at Google

22 03:10 Video.

23 03:10 Q. What responsibilities did he have?

24 03:10 A. He was responsible for a number of developments

25 on the product, including the tools for review of

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2 03:10 content.

3 03:10 Q. Do you know whether he reported to Mr. Anderson

4 03:10 or vice versa?

5 03:11 A. No, he did not report to Mr. Anderson or vice

6 03:11 versa.

7 03:11 Q. Do you know who Mr. Walk reported to?

8 03:11 A. I don't know who he reported to at the time.

9 03:11 Q. Where was he based?

10 03:11 A. Mountain View.

11 03:11 Q. And you're providing Mr. Walk here a list of

12 03:11 certain sports-related information, including e-mail

13 03:11 addresses; is that right?

14 03:11 A. I'm sorry?

15 03:11 Q. You're providing Mr. Walk certain

16 03:11 sports-related information concerning the names, the

17 03:11 e-mail, the websites for various sports entities; is

18 03:11 that right?

19 03:11 A. This is a list of various sports names and

20 03:11 website URL's.

21 03:11 Q. How come you're providing it to Mr. Walk?

22 03:12 MR. INGBER: Take your time to review the

23 03:12 document.

24 03:12 THE WITNESS: This was part of a process when

25 we were looking to provide a means of matching based on

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2 06:20 competitor of Google Video?

3 06:20 MR. INGBER: Object to form to the extent it

4 06:20 mischaracterizes Mr. Walker's testimony.

5 06:20 BY MS. MAGUIRE:

6 06:20 Q. Was YouTube a primary competitor?

7 06:20 A. YouTube --

8 06:20 MR. INGBER: Object to form. The word

9 06:20 "primary" is vague.

10 06:20 THE WITNESS: I never said YouTube was a

11 06:20 primary competitor.

12 06:20 I thought certain aspects of what YouTube did

13 06:20 was competitive to our platform particularly as a place

14 06:20 for people to submit and share video content.

15 06:20 BY MS. MAGUIRE:

16 06:20 Q. Okay.

17 06:20 Given that, that YouTube was a competitor of

18 06:20 Google Video --

19 06:20 MR. INGBER: Objection.

20 06:20 Hold on. That mischaracterizes the witness'

21 06:21 testimony.

22 06:21 BY MS. MAGUIRE:

23 06:21 Q. Was YouTube a competitor of Google Video?

24 06:21 A. I think I just answered that. There were
25 aspects of what they did that were competitive.